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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,756	12/31/2001	William G. Reeves		6291
23556	7590	04/14/2004	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			CHANG, VICTOR S	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 04/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/038,756	REEVES ET AL.
	Examiner	Art Unit
	Victor S Chang	1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 04 March 2004.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-10 and 12-29 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-10 and 12-29 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date
4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ .
5) Notice of Informal Patent Application (PTO-152)
6) Other:

DETAILED ACTION

1. The Examiner has carefully considered Applicants' amendments and remarks filed on 3/4/2004. Applicants' amendments to claims 1, 12, 13 and 22, and cancellation of claim 11 have been entered.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Rejections not maintained are withdrawn.

Claim Objections

4. Claims 12, 13 and 15 are objected to because of the following informalities:
In claims 12 and 13, please correct "ZnCl2" to --ZnCl₂--.
In claim 15, please correct "CaCl2" to --CaCl₂--.
Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. Claim 8 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention, substantially for the reasons set forth in section 4 of Paper No. 112003, together with the following additional observations.

Applicants' response arguing that "Example 7 ... teaches that drying with a desiccant can have the effect of closing the bubbles at the surface of the foam while maintaining the highly porous structure in the interior of the sheet, creating a skin-like surface on the outside of the sheet to provide a product with differential wetting" (Remarks, page 6, 4th paragraph) has been carefully considered, but is not persuasive. The Examiner repeats (see Paper No. 112003, page 2) that in the field of invention Applicants expressly stated that the invention relates to absorbent foam compositions (Specification, page 1, first paragraph). As such, it appears that the recited limitation in claim 8 "pores on the surface of sheet are substantially closed-celled" is not enabling, because nowhere in the Specification, including Example 7, is there a teaching pertaining to how to effectively use a foam having a substantially closed-cell surface for fluid absorption and transport. As such, the Examiner again asserts that claim 8 contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to use the invention. Further, the Examiner notes that claim 8 also appears to be unduly broad and in excess of provided enablement in Example 7, because it only teaches a foam sheet having "a skin-like surface on the outside of the sheet", nowhere there is a support for the instantly claimed "pores on the surface of sheet are substantially closed-celled".

6. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 8, lines 1-2, the phrase “pores on the surface of sheet are substantially closed-celled” is vague, indefinite and confusing. In particular, in view of applicants’ argument that the “substantially closed-celled” surface pores relate to “a product with differential wetting” (Remarks, page 6, 4th paragraph), while in Example 7 there is only a teaching of forming a foam sheet having “a skin-like surface on the outside of the sheet”. As such, it is unclear to the Examiner as to what is the scope of the instantly claimed “substantially closed-celled”, i.e., the recitation clearly fails to give notice as to what constitutes infringement upon the instantly claimed invention. Clarification is requested.

Response to Amendment

7. Claims 1-7 and 9-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Battista et al. (US 3954493), substantially for the reasons set forth in section 5 of Paper No. 112003, together with the following additional observations.

It is noted that claim 1 has been amended to incorporate the element “zinc chloride” of cancelled claim 11.

Applicants’ arguments “As amended, the rejection based on Battista et al. has been overcome. For example, Battista et al. teach that regenerated sponges are formed from a mixture of ... viscose solution of viscose contains cellulose, reinforcing fibers, and an inorganic pore forming salt, ... In contrast, Applicants claim, *inter alia*, a foam produced by at least partially dissolving a carbohydrate in a zinc chloride solution, and further introducing a gas to produce the pores ...” (Remarks, page 7, bottom

paragraph) have been carefully considered, but are not persuasive. The Examiner repeats (see Paper No. 112003, page 3) that Battista's method of forming open-celled sponge has not been relied upon in the prior Office Action. Further, the product by process limitations have not been shown on the record to produce a patentably distinct article, as such the formed articles are rendered *prima facie* obvious. It should be pointed out that product-by-process claims are product claims and that to be limiting in a product claim, a process limitation must be evidenced as effecting the structure or chemistry of the resultant product over the prior art. Further, the burden of proof for this showing is on Applicant after the Examiner presents an otherwise *prima facie* rejection. See MPEP § 2113. As such, the Examiner notes that while Applicants Remarks point out the process differences between the prior art and instantly claimed invention, Applicants' arguments are deficient in providing any evidentiary support that the structure or chemistry of the instantly claimed invention is distinct over the prior art. It should be noted that arguments of counsel cannot take the place of factually supported objective evidence. See MPEP § 2144.08.II.B.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor S Chang whose telephone number is 571-272-1474. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Victor S Chang
Victor S Chang
Examiner
Art Unit 1771

4/7/2004